

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM PARKER,	)	
	)	
Plaintiff,	)	Hon. J. Nicholas Ranjan
	)	
v.	)	2:23-cv-2102-NR
	)	
EDWARD GAINNEY, et al.,	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	

**DEFENDANT EDWARD GAINNEY’S MOTION TO DISMISS PLAINTIFF’S  
COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant Mayor Edward Gainey (“Mayor Gainey”) respectfully submits this Motion to Dismiss all claims filed against him by Plaintiff William Parker (“Mr. Parker”).

1. Mr. Parker filed the instant action against Mayor Gainey and other defendants alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. ECF No. 1.

2. The complaint sets forth the following claims against Mayor Gainey: (1) Fourth Amendment malicious prosecution; (2) First Amendment retaliation; (3) a second claim of First Amendment retaliation; (4) a second claim of Fourth Amendment malicious prosecution, which is titled to include claims for excessive force and false arrest; and (5) a Fourteenth Amendment claim for failure to train, discipline, or supervise. *Id.*

3. Mr. Parker fails to state a claim for malicious prosecution against Mayor Gainey because his complaint does not include facts showing that Mayor Gainey initiated a criminal proceeding against him.

4. Even if there are sufficient facts to state a claim for malicious prosecution, Mayor Gainey is entitled to qualified immunity from this claim.

5. Mr. Parker likewise fails to state a claim for First Amendment retaliation against Mayor Gainey because his complaint does not include facts showing that Mayor Gainey was aware

that Mr. Parker was engaged in protected activity and took retaliatory action against him. Mr. Parker's complaint does not include facts showing that Mayor Gainey arrested him or prosecuted him – which are the underlying retaliatory acts alleged. *Id.* ¶ 42.

6. Mr. Parker fails to state a Fourteenth Amendment claim Mayor Gainey for failure to train, discipline, and/or supervise. *Id.* ¶¶ 45-51.

7. To the extent Mr. Parker is stating claims related to his arrest and prosecution under the Fourteenth Amendment, Mr. Parker cannot bring such claims because they are properly brought under the Fourth Amendment. *See Albright v. Oliver*, 510 U.S. 266, 273 (1994).

8. To the extent Mr. Parker is stating a *Monell* claim against Mayor Gainey, this claim fails as a matter of law because *Monell* claims cannot be brought against individual defendants. *Lepre v. Lukus*, 602 F. App'x 864, 869 n.4 (3d Cir. 2015).

9. Mr. Parker also states a second set of First and Fourth Amendment claims against Mayor Gainey that stem from the same incident as his first set of claims. These claims should be dismissed because they are redundant.

10. Mr. Parker's second set of Fourth Amendment claims are titled to include claims of false arrest and excessive force against Mayor Gainey.

11. Any false arrest or excessive force claim against Mayor Gainey must also be dismissed for failure to state a claim. Mr. Parker has not pleaded any facts showing that Mayor Gainey used any force on him or participated in his arrest.

12. For these reasons, Mayor Gainey respectfully requests that this Court dismiss all claims against him in Mr. Parker's Complaint as legally insufficient, as explained in further detail in his Brief accompanying this motion.

13. A proposed order is attached.

Respectfully submitted,

KRYSIA KUBIAK  
City Solicitor

/s/ Hillary M. Weaver

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*Counsel for Mayor Edward Gainey*

**CERTIFICATE OF SERVICE**

I, Hillary M. Weaver, hereby certify that I caused a copy of Edward Gainey's Motion to Dismiss and Brief in Support thereof to be served upon the following via electronic mail:

Mr. William Parker  
Parkerlegal412@gmail.com  
*Pro Se Plaintiff*

Date: May 10, 2024

/s/ Hillary M. Weaver  
Hillary M. Weaver, Esquire  
Assistant City Solicitor  
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